

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVE DAHLGREN, DAHLGREN'S,)
INC., THEODORE COLLIN, LLOYD)
ERICKSON, ERICKSON LAND AND)
CATTLE, DIXON GRANSTRA, d/b/a)
GRANSTRA CATTLE, DG FARMS,)
INC., SKANE, INC., CLARK)
NELSON, WELLS AG ENTERPRISES,)
INC., DON SJOGREN, BJW FARMS,)
INC., EWW FARMS, INC., and)
DUANE KUDLACEK,)

8:05CV15

Plaintiffs,)

v.)

MEMORANDUM AND ORDER

FIRST NATIONAL BANK OF)
HOLDREGE,)

Defendant.)

Plaintiffs have filed an objection to issuance of a subpoena for production of documents by a nonparty, the Security State Bank of Sheldon, Iowa. Local Rule 45.1(b) allows such an objection and further provides, "No subpoena shall be issued for documents or premises whose inspection or production is contested under this rule until the court has resolved the objection. Nothing in this rule affects the availability of objections set forth in Federal Rule of Civil Procedure 45(c) and (d)." The federal rule applies only to "a person commanded to produce and permit inspection" filing an objection to producing items sought by the subpoena, and the objection does not act as a motion; rather, the party serving the subpoena must move to compel the production.

This court's local rule is not clear on whether the objection serves, without the filing of a motion, to forestall production of the items listed in the subpoena. Nor does it give

any direction in the situation in which, as in this case, the issuance of the subpoena would come from a court outside the District of Nebraska. In an effort to resolve the matter expeditiously,

IT THEREFORE HEREBY IS ORDERED,

1. The "Objection to Amended Notice of Subpoena For Production of Documents," filing 69, is construed as a motion for protective order pursuant to Fed. R. Civ. P. 26(c).

2. Plaintiffs may file evidence and a brief in support of the motion on or before July 19, 2005.

3. Defendant may file evidence and a brief in opposition to the motion on or before July 26, 2005.

4. Defendant shall not request that the Clerk of the United States District Court for the Northern District of Iowa, Western Division, issue the subpoena described in the motion until this motion has been resolved. If the subpoena has heretofore been issued, defendant shall take no action to serve the subpoena until this motion has been resolved. If the subpoena has heretofore been served, defendant shall forthwith notify the Security State Bank of Sheldon, Iowa, that it need not comply with the subpoena until this court has resolved the objection filed by plaintiffs.

5. The Clerk of this Court shall immediately notify the Clerk of the United States District Court for the Northern District of Iowa, Western Division, of the entry of this order and provide that office with a copy of this order, the "objection" construed as a motion, and accompanying documents. The Clerk of the United States District Court for the Northern District of Iowa, Western Division, is respectfully requested not to issue the subject subpoena if it has not heretofore done so, until the motion has been resolved by this court.

DATED this 12th day of July, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge